

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In The Matter Of

Closed Captioning And Video Description
Of Video Programming

Implementation Of Section 305 Of The
Telecommunications Act Of 1996

Video Programming Accessibility

MM Docket No. 95-176

**REPLY OF GAME SHOW NETWORK, L.P.
TO OPPOSITIONS TO ITS PETITION FOR RECONSIDERATION**

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Dated: December 11, 1997

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Pursuant to Section 1.429(g) of the Commission's Rules, GAME SHOW NETWORK, L.P. ("GSN") by its attorneys hereby submits its Reply to the Oppositions to its Petition for Reconsideration in the above-captioned proceeding filed by the National Association of the Deaf/Consumer Action Network ("NAD"), Self Help for Hard of Hearing People, Inc. ("SHHH"), and the Council of Organizational Representatives on National Issues Concerning People who are Deaf or Hard of Hearing ("COR").

INTRODUCTION

In its Petition for Reconsideration ("GSN Petition"), GSN has proposed several modifications of the Commission's closed captioning rules, including exempting interactive programming, expanding the new network exemption, and clarifying the implementation timetable. GSN's petition was joined by similar petitions from other cable networks, and has received additional support from a number of other parties to this proceeding. By adopting these

suggestions, the Commission will ensure that closed captioning becomes widely available on all programming services without harming the development of new and innovative cable networks.

NAD, COR, and SHHH have dismissed these suggestions, arguing that the Commission should actually **tighten** its closed captioning rules. However, none of the oppositions adequately addresses the harm that their suggested captioning requirements would inflict on startup networks like GSN.¹ If the Commission accepts the arguments and implements the suggestions of NAD *et al*, it will cripple these fledgling cable networks, ultimately resulting in fewer channels showing less captioned programming. That is precisely the result that Congress sought to avoid in enacting the closed captioning provision. In order to avoid such an outcome, the Commission should grant GSN's Petition for Reconsideration.

ARGUMENT

I. INTERACTIVE PROGRAMMING SHOULD BE EXEMPT FROM CLOSED CAPTIONING REQUIREMENTS.

NAD and COR attack GSN's request that the Commission exempt interactive programming from its captioning requirements.² COR opposes all requests for exemption, including that for interactive programming, asserting that exemptions should only be granted where captioning exceed the financial resources of the video programmer. COR Opposition at 2-

¹ GSN also notes that none of the oppositions even attempt to defend the Commission's unexplained switch from a percentage-based implementation schedule for the captioning of new programming to a schedule based on an absolute number of hours. As noted by GSN and others, this switch will unfairly burden new networks, which tend to produce relatively lower amounts of new programming, by forcing such networks to caption virtually all their new programming. See Petition of Game Show Network, L.P. for Reconsideration ("GSN Petition") at 12 n.7 (filed Oct. 16, 1997); Petition for Partial Reconsideration by Outdoor Life Network, L.L.C. *et al.* ("Outdoor Life Petition") at 10-11 (filed Oct. 16, 1997); Response of the A&E Television Networks ("A&E Response") at 14-16 (filed Nov. 20, 1997); Response of Lifetime Television ("Lifetime Response") at 4-7 (filed Nov. 26, 1997); Opposition of National Cable Television Association to Petitions for Reconsideration ("NCTA Opposition") at 21 (filed Nov. 28, 1997).

² Response of the National Association of the Deaf and the Consumer Action Network to Requests for Reconsideration ("NAD Response") at 13-14 (filed Nov. 26, 1997); Statement in Opposition to Industry Requests

3. NAD argues specifically against an interactive programming exemption, stating that deaf and hearing-impaired persons would be able to enjoy captioned interactive programming if the network simply rearranges the captions and graphics. NAD Response at 14. NAD also asserts that even if captions happen to obscure the action on a program, captioning will at least convey the rules of the game and the program's dialogue. *Id.*

These arguments are meritless. First, the Commission has the authority to exempt classes of programming whenever it finds that captioning would be "economically burdensome." 47 U.S.C. § 713(d)(1). As the Commission found in its Report and Order, however, "economic burden" is not merely a matter of the cost of captioning the programming. Rather, "economic burden" can include "situations where captioning would be difficult or technically infeasible, would not add significantly to the information that is already available visually, [or] would create severe logistical problems. . . ."³ See also NCTA Opposition at 9 (noting that Congress directed the FCC to consider the impact of its captioning requirements on the **operations** of programmers). Because this is precisely the situation faced by networks required to caption their interactive programming, such captioning is "economically burdensome" and subject to Section 713(d)(1). See GSN Petition at 17-19.

NAD similarly fails in its challenge to a class exemption for interactive programming. NAD does not dispute that the Commission failed to address this issue in its Report and Order. See GSN Petition at 18-19. Moreover, in contrast to GSN's presentation to the Commission (*id.* at 18), NAD provides no evidence other than its own assertions that captioning and graphics can

for Reconsideration and In Support of Consumer Requests for Reconsideration ("COR Opposition") at 2-3 (filed Nov. 26, 1997).

³ Report and Order, *In the Matter of Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*,

be structured in a way that does not affect the viewability of interactive programming. *See* NAD Response at 9. Nor does NAD discuss the additional costs that such measures would impose. Perhaps in recognition of these points, NAD asserts that even if captioning must be turned off for deaf and hearing-impaired viewers to watch an interactive show, captioning should still be required because it will allow such viewers to read the program's rules and questions and answers. *Id.* at 14. But these components make up only a small part of interactive programming. For the rest of the program, the captions will have to be turned off, or the show will be meaningless.

Congress has instructed the Commission to ensure that "the style and standards [of closed captioning . . . are appropriate for the particular type of programming." H.R. 104-204, 104th Cong., 1st Sess. at 114. Captioning is inappropriate for interactive programming because it compromises the essence of the programming itself. The Commission should exempt interactive programming from its captioning requirements.

II. THE NEW NETWORK EXEMPTION SHOULD BE EXPANDED AND THE IMPLEMENTATION TIMETABLE MODIFIED FOR NEW NETWORKS.

NAD, COR, and SHHH attack not only GSN's recommended changes to the new network exemption, but the basic structure of the exemption itself. *See* NAD Response at 6-8; COR Opposition at 4; Comments of Self Help for Hard of Hearing People, Inc. ("SHHH Comments") at 8. NAD and SHHH recommend that the Commission revise the new network exemption to be wholly based on "a network's ability to afford captioning expenses," (NAD Response at 7), while COR opposes the new network exemption *in toto*. COR Opposition at 4.

Once again, however, the opposing parties provide little or no evidence to support their claims, and belittle or completely overlook the financial circumstances of fledgling national networks. As established by GSN, Outdoor Life, and others, new national cable networks have significant startup costs that may cause even those with high revenue to experience repeated losses.⁴ As the Commission properly noted, "the additional costs of captioning could pose an economic burden that might deter entry by some networks." *Report and Order* ¶154. Indeed, according to cost figures submitted by SHHH, compliance with the Commission's timetable for the captioning of new programming would cost each new network over \$17 million between 2000 and 2005. SHHH Comments at 3.⁵ If this amount is added to the \$18 million spent on captioning 75 percent of its pre-rule programming⁶, **a new network could be required to spend \$35 million on captioning by 2008.** That kind of burden would severely overburden, if not destroy, a new network.⁷

This problem would only be exacerbated if the Commission commences its new network exemption for existing new networks from their launch date rather than the enactment date of its rules, and denies new networks the same transition period for captioning new and pre-rule programming as that given their larger, more-established competitors. *See* GSN Petition at 9-13. *Compare* NAD Response at 6; SHHH Comments at 5. By treating new and older networks

⁴ *See* GSN Petition at 7-8; Outdoor Life Petition at 6-9; NCTA Response at 11-13.

⁵ According to SHHH, "captioning industry sources" state that captioning will cost about \$800 an hour. SHHH Comments at 3 ("captioning of new programming at 450 hours per quarter, the first required benchmark, . . . could cost . . . \$360,000 in today's dollars. . . ."). *Id.* at 3. Even assuming SHHH's figure, captioning will cost \$1.44 million each year in 2000 and 2001, \$2.8 million each year in 2002 and 2003, and \$4.32 million each year in 2004 and 2005, for a total of \$17.12 million in six years.

⁶ *See* GSN Petition at 8 (estimating GSN's cost to caption 75 percent of its pre-rule programming at \$18 million).

⁷ NAD's claim that new networks unable to afford closed captioning can simply apply for an undue burden exemption ignores the financial and administrative burden associated with such a petition, as well as the fact that such networks will still have to contract for and perform captioning pending Commission resolution of the exemption request. *See* NCTA Response at 21.

equally, the Commission will provide new networks adequate time to contract for and perform captioning in anticipation of the captioning requirements. *See* Lifetime Response at 8; NCTA Response at 11. In addition, the Commission would avoid the manifestly unfair situation of requiring a new network to caption 95 percent of its programming immediately following its exemption period.

III. THE GENERAL REVENUE EXEMPTION SHOULD BE REVISED TO REFLECT THE FINANCIAL REALITIES OF NATIONAL STARTUP NETWORKS.

In their oppositions to GSN's petition for reconsideration, NAD and SHHH continue to understate the financial and administrative burden of captioning on new networks. Currently, the Commission's general revenue exemption exempts from its captioning requirements networks with less than \$3 million in annual revenue, and limits spending on captioning to 2 percent of a network's revenue. As GSN and others have noted, however, because of the high costs associated with launching a new national network, such networks may have revenue well above \$3 million, but rarely achieve profitability for years after launch. GSN Petition at 13-14.⁸ To account for this situation, the Commission should revise its general revenue exemption by raising its revenue threshold to at least \$20 million and significantly lowering its spending cap.

IV. THE REQUIREMENTS FOR CAPTIONING OF PRE-RULE PROGRAMMING SHOULD BE PHASED-IN GRADUALLY.

Finally, NAD opposes GSN's recommendation that the Commission revise its pre-rule programming rules to allow programmers to caption such programming over time, rather than instantaneously requiring 75 percent captioning at the end of ten years. As GSN pointed out in its Petition, however, requiring captioning of 75 percent of programming -- even in ten years -- is

⁸ *See also* Outdoor Life Petition at 6-9; A&E Response at 13; Lifetime Response at 7.

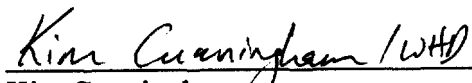
unrealistic for many new networks and a gradual implementation schedule of 2 percent per year is the best way to achieve maximum captioning.⁹ GSN's approach is echoed by NAD, which also proposes a gradual phase-in for captioning of pre-rule programming. See NAD Petition at 23-24.

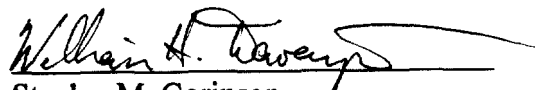
CONCLUSION

For the foregoing reasons, GSN urges the Commission to grant its petition for reconsideration.

Respectfully submitted,

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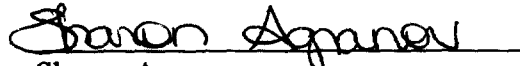
Attorneys for Game Show Network, L.P.

Dated: December 11, 1997

⁹ In addition to the programs captioned as part of the Commission's transition schedule for pre-rule programming, the Commission also could require networks to caption their "substantially viewed" programming, as that term would be defined by the Commission. See GSN Petition at 16.

CERTIFICATE OF SERVICE

I, Sharon Agranov, do hereby certify that copies of the Reply of Game Show Network, L.P. to the Oppositions to its Petition for Reconsideration have been served on the parties listed below via hand delivery unless otherwise indicated on this 11th day of December, 1997.


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